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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	:	
	:	Chapter 11
The National Rifle Association of America, <i>el al.</i> ¹	:	
	:	(Jointly Administered)
Debtors.	:	
<hr/>		Case No. 21-30085-hdh11

**MOTION OF CHRISTOPHER W. COX (I) TO MODIFY THE AUTOMATIC STAY TO
ALLOW A TRIAL-READY ARBITRATION TO PROCEED AGAINST THE
NATIONAL RIFLE ASSOCIATION OF AMERICA, AND (II) FOR RELATED RELIEF**

PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT. ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET #1254, DALLAS, TEXAS 75242 BEFORE CLOSE OF BUSINESS ON FEBRUARY 8, 2021, WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE ADEQUATELY PROTECTED IF THE STAY IS TO BE CONTINUED.

¹ The last four digits of the Debtors' taxpayer identification numbers are: 6130 (NRA) and 5681 (Sea Girt). The Debtors' mailing address is 11250 Waples Mill Road, Fairfax, Virginia 22030.

Christopher W. Cox (“Cox”), by and through his undersigned counsel, hereby submits this motion (the “Motion”) for entry of an order, in substantially the form attached hereto (i) to grant relief from the automatic stay provided by Section 362 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), to allow Cox to proceed with an arbitration against the National Rifle Association of America (the “NRA”) that was scheduled to proceed to trial on January 18, 2021 (the “Arbitration”), and (ii) to confirm that the automatic stay does not apply to stay the counterclaims of the NRA against Cox that were also scheduled to proceed to trial that same day.

INTRODUCTION

1. The Court should modify the automatic stay to allow Cox, a former employee of the NRA, to proceed to liquidate his claims against the NRA in the Arbitration. In addition, the Court should confirm that the automatic stay does not stay the NRA’s counterclaims in the Arbitration.

2. First, there will be substantial prejudice to Cox if the stay is not modified to allow the Arbitration to proceed. If the stay is not modified, Cox would be required to recommence a new proceeding in this Court when the evidentiary hearing was set to commence just one business day after the Petition Date. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Second, the NRA would not be prejudiced in any way if the stay is lifted. The NRA has stated to this Court that it intends to pay all allowed claims in full. Indeed, proceeding with the

trial in the Arbitration now would benefit the Debtors' estates by eliminating the uncertainty over the amount of Cox's claim, [REDACTED] and thus expediting the Debtors' reorganization efforts.

4. Third, judicial economy favors modifying the automatic stay. The Arbitration is trial-ready and was scheduled to commence on January 18, 2021. To have this Court hold hearings on an [REDACTED] when there is already an arbitrator that is very familiar with the facts and issues surrounding the claims is a waste of estate and judicial resources.

5. Fourth, [REDACTED]

This is particularly true here, where the NRA seems to have only a handful of litigation matters pending, and there is little reason to centralize pending litigation in this Court.

6. Fifth, it is well settled that the automatic stay does not apply to the NRA's counterclaims. [REDACTED] The Court should confirm that the automatic stay does not apply to counterclaims of the Debtor.

JURISDICTION

7. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334. The Motion is a core matter within the meaning of 28 U.S.C. § 157(b)(2).

8. The NRA and Sea Girt LLC ("Sea Girt" and together with the NRA, the "Debtors") assert that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409, but there are questions with respect to that assertion.²

² The NRA filed its Certification of Formation for Sea Girt on November 24, 2020, just 52 days prior to the filing of the Debtors' bankruptcy petitions on January 15, 2021 (the "Petition Date"). *See* Buchanan Dec. Ex. E. The creditor matrix for Sea Girt lists just one creditor other than the NRA, and that creditor, Vanessa Shahidi, is an officer of the NRA working at the NRA's principal place of business in Fairfax, Virginia. (Sea Girt Dkt. No. 13).

9. The statutory grounds for the relief requested herein include Section 362 of the Bankruptcy Code.

BACKGROUND

10. Cox was employed by the NRA for 24 years. He served for 17 years as the executive director of the NRA's Institute for Legislative Action, the NRA's lobbying arm.

11. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12. [REDACTED]
[REDACTED]
[REDACTED]

13. [REDACTED]
[REDACTED]

14. [REDACTED]
[REDACTED]

15. [REDACTED] the evidentiary hearing was finally scheduled to commence on Monday, January 18, 2021. [REDACTED]

[REDACTED]
[REDACTED]

However, the business day before the hearing was to begin, Friday, January 15, 2021, the NRA filed its bankruptcy

petition. Cox was notified of the NRA's filing at 4:25 p.m. on Friday. [REDACTED]

[REDACTED]

[REDACTED]

16. In connection with its bankruptcy petition, the NRA has stated that it can pay all allowed claims in full. The NRA's Executive Vice President, Wayne LaPierre, has stated that "[t]he NRA is not 'bankrupt' or 'going out of business.' The NRA is not insolvent. **We are as financially strong as we have been in years.**" *See* Buchanan Dec. Ex. C (emphasis in original). Rather, the NRA explained that its foray into bankruptcy is part of a plan to "utiliz[e] the protection of the bankruptcy court" to "restructure the Association as a Texas nonprofit." *See* Buchanan Dec. Ex. D. According to the NRA, the bankruptcy petition was only necessary because New York's Attorney General has "weaponized the legal and regulatory powers [she] wield[s] to penalize the Association and its members for purely political purposes." *Id.* The NRA touts that its "plan can be summed up quite simply: We are DUMPING New York[.]" *See* Buchanan Dec. Ex. C.

17. While the NRA may be "as financially strong as [they] have been in years," [REDACTED]

[REDACTED]

[REDACTED]

RELIEF REQUESTED

18. The Court should grant Cox relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code to proceed with the Arbitration. In addition, the Court should confirm that the automatic stay does not stay the NRA's counterclaims in the Arbitration.

BASIS FOR RELIEF REQUESTED

A. Cause Exists to Lift the Automatic Stay.

19. Section 362 of the Bankruptcy Code provides that the court shall grant relief from

the automatic stay, for cause, including lack of adequate protection. *See* 11 U.S.C. § 362(d)(1). Cox has the initial burden of establishing a prima facie case that cause exists. *See In re Self*, 239 B.R. 877, 880 (Bankr. E.D. Tex. 1999). Thereafter, pursuant to Bankruptcy Code Section 362(g)(2), the Debtor bears the burden of proof on all other issues, including the absence of cause for relief under Section 362(d)(1).

20. Although “cause” is not defined in the Bankruptcy Code, courts have interpreted the concept broadly in order to respond equitably to the specific facts of a case. *See, e.g., Mooney v. Gill*, 310 B.R. 543, 546-47 (N.D. Tex. 2002) (“Cause is an intentionally broad and flexible concept, made so in order to permit the courts to respond in equity to inherently fact-sensitive situations.”) (*quoting In re Sentry Park, Ltd.*, 87 B.R. 427, 430 (Bankr. W.D. Tex. 1988)); *see also Reitnauer v. Tex. Exotic Feline Found., Inc. (In re Reitnauer)*, 152 F.3d 341, 343 n.4 (5th Cir. 1998) (cause determined on a case-by-case basis); *In re Choice ATM Enterprises, Inc.*, 2015 WL 1014617, at *4 (Bankr. N.D. Tex. Mar. 4, 2015) (“Even among bankruptcy courts in this circuit, no single approach prevails.”).

21. In this Circuit, cause includes (1) a focus on prejudice to the parties; and (2) questions of judicial economy. *See, e.g., In re Xenon Anesthesia of Texas, PLLC*, 510 B.R. 106, 112 (Bankr. S.D. Tex. 2014) (finding that judicial economy alone can provide grounds to lift the automatic stay); *In re S.H. Leggitt Co.*, 2011 WL 1376772, at *4 (Bankr. W.D. Tex. 2011) (factors to consider include “the interests of judicial economy, expeditious and economical resolution of the litigation, comity, jurisdiction, and balancing of the harm between the parties.”).

22. Here, all of the factors warrant modification of the automatic stay:

- The Arbitration is trial-ready, and Cox will be prejudiced if he is required to re-commence and relitigate his case in another forum, [REDACTED]
[REDACTED] The NRA filed its bankruptcy petition just one business day prior

to when the Arbitration was scheduled to be tried.

- The NRA will suffer no prejudice, as it was also prepared to proceed with the Arbitration, and the NRA intends to pay all allowed claims in full.
[REDACTED]
- Judicial economy favors liquidating the claims of Cox and counterclaims of the NRA in the Arbitration, and there will be a waste of estate and judicial resources if the claims that would have been determined in the Arbitration now have to be determined by the Bankruptcy Court, which is unfamiliar with the record and proceedings [REDACTED]
[REDACTED]

B. The Federal Arbitration Act Favors Modification of the Automatic Stay

23. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. The FAA provides that written agreements to arbitrate a dispute are “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) (quoting 9 U.S.C. § 2); *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1412 (2019) (“The Federal Arbitration Act requires courts to enforce covered arbitration agreements according to their terms.”). This well-established rule reflects “both a ‘liberal federal policy favoring arbitration’ ... and the ‘fundamental principle that arbitration is a matter of contract.’” *AT&T Mobility*, 563 U.S. at 339 (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 130 (2010)).

25. The FAA established a strong federal policy in favor of arbitrations. *See Shearson/American Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1987). A bankruptcy court may enforce an arbitration clause of a prepetition agreement absent a showing that “the text, legislative history, or purpose of the Bankruptcy Code conflicts with the enforcement of an arbitration clause.” *Hays and Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1156-1157 (3d Cir. 1989); *see also Henry v. Educ. Fin. Serv. (In re Henry)*, 944 F.3d 587, 590-91 (5th Cir. 2019) (bankruptcy courts may decline to enforce arbitration clauses when two requirements are met, (i) the proceeding must adjudicate statutory rights conferred by the Bankruptcy Code and not the debtor’s prepetition legal or equitable rights, and (ii) if requiring arbitration would conflict with the purposes of the Bankruptcy Code); *In re Gandy*, 299 F.3d 489, 495, (5th Cir. 2002) (bankruptcy court may refuse to enforce an arbitration agreement when the nature of the proceeding derives exclusively from the Bankruptcy Code and arbitration would conflict with the purpose of the Code).

26. [REDACTED]

[REDACTED] In addition, requiring arbitration would not conflict with the purposes of the Bankruptcy Code, [REDACTED]

[REDACTED] the matter is trial-ready, and the Debtor intends to pay all allowed claims in full. In addition, there are apparently only a handful of litigation matters involving the NRA, and the NRA does not need to centralize or streamline litigation in this Court. Accordingly, the stay should be modified to allow the Arbitration to proceed.

C. The NRA’s Counterclaims Are Not Subject to the Automatic Stay

27. [REDACTED]

[REDACTED] *See Matter*

of *U.S. Abatement Corp.*, 39 F.3d 563, 568 (5th Cir. 1994) (“[C]ounterclaims asserted by a debtor are not actions ‘against the debtor’ which are subject to the automatic stay.”); *Hegedus v. Nationstar Mortg. LLC.*, 2020 WL 957464, at *4 (W.D. Va. Feb. 27, 2020) (holding that “claims or counterclaims brought by a debtor are not barred by the automatic stay”); *Leeber Realty LLC v. Trustco Bank*, 2019 WL 498253, at *11 (S.D.N.Y. Feb. 8, 2019), *aff’d*, 798 F. App’x 682 (2d Cir. 2019) (“Because the automatic stay’s primary purpose is to preserve a bankrupt’s estate for the benefit of all creditors, courts consistently hold that actions brought by a debtor are not subject to the automatic stay.”); *Tenas-Reynard v. Palermo Taxi Inc.*, 2016 WL 1276451, at *7 (S.D.N.Y. Mar. 30, 2016) (“The automatic stay provision of Section 362 by its terms only stays proceedings against the debtor, and does not address actions brought by the debtor which would inure to the benefit of the bankruptcy estate. ... Accordingly, within one case, actions against a debtor will be suspended even though closely related claims asserted by the debtor may continue.”) (quotations, citations, and alterations omitted).

28. As a result, the Court should issue an order [REDACTED]

[REDACTED] that the Arbitration may proceed immediately with respect to the NRA’s counterclaims.

NOTICE

29. Notice of this Motion shall be provided to (a) counsel for the Debtors; (b) the creditors included on the list filed pursuant to Bankruptcy Rule 1007(d); (c) the United States Trustee; (d) those parties requesting notice pursuant to Local Bankruptcy Rule 2002-1(j); and (e) all other parties registered to receive ECF notifications in this case. Cox respectfully submits that such notice is sufficient and that no further notice of this Motion is required.

CONCLUSION

For the foregoing reasons, Cox respectfully requests entry of an order (i) modifying the

automatic stay to allow the Arbitration to proceed; (ii) confirming that the automatic stay does not stay the NRA's counterclaims, and (iii) granting such other and further relief as the Court deems just and proper.

Dated: January 25, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct redacted copy of the foregoing document and accompanying exhibits has been served upon all parties named on the attached Master Service List by first-class U.S. Mail, and all parties receiving notice by and through the Court's CM/ECF system. True and correct unredacted copies have been served upon counsel for the Debtor and the U.S. Trustee by first-class U.S. Mail, consistent with the relief requested in Mr. Cox's motion to seal, filed contemporaneously herewith. Mr. Cox will serve such additional parties with unredacted copies of the foregoing as provided in any further order of the Court.

/s/ David Neier

CERTIFICATE OF CONFERENCE

I hereby certify that on January 22, 2021, counsel for Cox requested to confer with Debtor's counsel concerning the foregoing motion. Debtor's counsel responded, but was unable to provide a final position prior to the filing of this time-sensitive motion.

/s/ David Neier

In re: Sea Girt LLC - Case No. 21-30080
In re: National Rifle Association of America - Case No. 21-30085

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